

STATE OF MICHIGAN
COURT OF APPEALS

EUSEBIO SOLIS, JR.,

Plaintiff-Appellant,

v

CALHOUN COUNTY PROSECUTOR,

Appellee.

UNPUBLISHED

February 1, 2007

No. 263733

Calhoun Circuit Court

LC No. 05-000749-AS

Before: Murray, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order denying his request for superintending control. We affirm.

Plaintiff Eusebio Solis, Jr., is an attorney licensed to practice law in Michigan. He also has served as a commissioner on the Calhoun County Board of Commissioners since January 2005.¹ Soon after plaintiff joined the board of commissioners, the Calhoun County prosecutor sent a "Request for Determination of Conflict of Interest" to members of the circuit court, the district court, and the probate court, asking for a determination whether a lawyer who is also a county commissioner may handle cases involving the prosecutor's office or sheriff's department.

On January 28, 2005, the chief district court judge and chief circuit court judge for Calhoun County issued a joint memorandum in response to the prosecutor's request. The memorandum stated in part:

[I]t is the conclusion of the Circuit and District Court Judges that a conflict of interest exists should [plaintiff] represent criminal defendants who are being prosecuted by the Calhoun County Prosecutor's Office while he sits on the Calhoun County Board of Commissioners. Additionally, it is a conflict of interest for [plaintiff] while a County Commissioner to handle any criminal cases where Calhoun County Sheriff's Deputies are witnesses.

¹ At oral argument, plaintiff indicated that he had been reelected to the Calhoun County Board of Commissioners in November 2006.

Therefore, until such time as the Michigan State Bar Ethics Committee concludes otherwise, it will be the position of the Circuit and District Courts that a conflict exists in such cases. The assigned judge on any presiding case(s) will address this conflict *sua sponte*.

On February 22, 2005, plaintiff appeared in district court representing Gary Goodrich at a preliminary examination in a criminal matter. The prosecutor moved to disqualify plaintiff, arguing that plaintiff's position as a Calhoun County commissioner created a conflict of interest regarding his representation of criminal defendants against the Calhoun County Prosecutor's Office.² The district court granted the motion.

On March 7, 2005, plaintiff filed a complaint for superintending control before the circuit court, along with a motion to disqualify the district and circuit court judges in Calhoun County from deciding whether his representation of criminal defendants in proceedings involving the Calhoun County Prosecutor's Office was a conflict of interest. The circuit court denied his complaint for superintending control and accompanying motion.

Plaintiff presents an interesting question before this Court. Specifically, he asks this Court to consider whether his elected position as a Calhoun County commissioner creates a conflict of interest when he represents defendants in criminal proceedings involving the Calhoun County Prosecutor's Office and the Calhoun County Sheriff's Department. However, plaintiff presents this question in the context of an appeal of the circuit court's denial of his request for superintending control. Plaintiff's complaint for superintending control was not the proper procedure to use to challenge the district court's order disqualifying him from representing a criminal defendant in a case involving the Calhoun County Prosecutor's Office. The circuit court also could not properly exercise superintending control over itself, as that power only exists over inferior courts. For these reasons, we affirm the circuit court's order denying plaintiff's complaint for superintending control.

The circuit courts have general superintending control over all inferior courts. MCL 600.615; *In re Hague*, 412 Mich 532, 545; 315 NW2d 524 (1982). An order for superintending control "enforces the superintending control power of a court over lower courts or tribunals." MCR 3.302(A). The filing of a complaint for superintending control is not an appeal; instead, it initiates an original civil action designed to order a lower court to perform a clear legal duty. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 346-347; 675 NW2d 271 (2003). "For superintending control to lie, the petitioners must establish that the respondents have failed to perform a clear legal duty *and* the absence of an adequate legal remedy." *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). If a plaintiff has a legal remedy by way of appeal, the court may not exercise superintending control and must dismiss the complaint.³ MCR 3.302(B), (D)(2);

² After the prosecutor raised this issue at the preliminary examination hearing, plaintiff stated that he had disclosed this conflict to Goodrich, who then consented to his continued representation.

³ MCR 3.302(B) prohibits a complaint for superintending control from being filed "[i]f another
(continued...)

Shepherd Montessori, supra at 347. We review the denial of a request for superintending control for an abuse of discretion. *In re Grant*, 250 Mich App 13, 14; 645 NW2d 79 (2002).

Plaintiff had an adequate alternate legal remedy available to him by way of appeal. At Goodrich's preliminary examination, the district court granted the prosecutor's motion to disqualify plaintiff. Plaintiff requested that the trial court grant a writ of superintending control to require the district court to "remove the per se prohibition against representing criminal defendants against the Calhoun County Sheriff and Prosecutor's Office" and to require the district court to "reconsider its position and enter an order that requires a determination to be made on a case-by-case basis" in response to this order.⁴

Instead, plaintiff should have appealed the district court's order in the preliminary examination to the circuit court. See MCL 600.8342(1). MCR 7.101(A)(2) notes, "[a]n order or judgment of a trial court reviewable in the circuit court may be reviewed only by an appeal."⁵ The parties do not dispute that the district court's ruling in the preliminary examination granting the prosecution's motion for disqualification was an order. Pursuant to MCL 600.8342(2), appeals from final judgments of the district court are by right and all other appeals are by application. Although plaintiff could not appeal to the circuit court by right, because the district court's order was not a final judgment, plaintiff could have appealed the district court's order by leave granted, as provided in MCR 7.103. Because plaintiff had a legal remedy by way of appeal, the circuit court did not have the authority to grant his request for superintending control and properly dismissed his complaint.⁶ *Shepherd Montessori, supra* at 347.

On appeal, plaintiff questions whether the prosecutor has standing to initiate a motion to disqualify him from representing retained clients in criminal proceedings and the extent to which the Calhoun County judiciary has the authority to decide issues concerning attorney compliance with the Michigan Rules of Professional Conduct. These questions arise from the district court's apparent determination that plaintiff's representation of defendants in criminal proceedings

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adequate remedy is available to the party seeking the order" MCR 3.302(D)(2) provides, "[w]hen an appeal in the Supreme Court, the Court of Appeals, the circuit court, or the recorder's court is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed."

⁴ Plaintiff later filed a motion as part of the superintending control proceedings requesting that the trial court reverse the district court's ruling disqualifying him from representing Goodrich.

⁵ MCR 7.101(A)(1) notes that this rule applies to the district court.

⁶ In his request for superintending control and his accompanying motion, plaintiff argued that the circuit court should disqualify all the county's district and circuit court judges from deciding whether his representation of criminal defendants in proceedings involving the Calhoun County Prosecutor's Office constituted a conflict of interest. However, MCR 2.003 details a procedure by which a party may move to disqualify a judge. Accordingly, plaintiff has an adequate legal remedy by which he may move to disqualify a judge, and his request that the circuit court exercise superintending control to disqualify the district and circuit court judges from considering this issue is meritless. Further, because the circuit court only has superintending control over inferior courts, a circuit court judge could not implement superintending control to force another circuit court judge to perform a legal duty. See MCL 600.615; MCR 3.302.

involving the Calhoun County Prosecutor's Office constituted a conflict of interest in light of plaintiff's position as a Calhoun County commissioner. Essentially, to consider these questions on their merits, we would have to treat plaintiff's request for superintending control (and, by extension, this appeal) as an appeal of the district court's order in the preliminary examination. We decline to do so.

As discussed *supra*, a request for superintending control is an original civil action, not an appeal. *Shepherd Montessori, supra* at 346-347. The circuit court would have received the entire district court record for review if the district court's order were appealed. See MCR 7.101(F). However, the circuit court did not receive or review the district court record when addressing plaintiff's complaint for superintending control, nor have we been provided with a copy of the district court record for our review. Notably, although the parties do not dispute that the district court issued an order precluding plaintiff from representing Goodrich in the preliminary examination, we have not been provided with a copy of the district court order. Without a copy of the written order, we cannot determine whether the district court ordered that plaintiff was merely prohibited from representing Goodrich or from representing criminal defendants in any action involving the Calhoun County Prosecutor's Office, as plaintiff claims. Further, we cannot consider the reasons the district court gave, if any, for its ruling.⁷ Because the case in which the district court made this determination has not been appealed before this Court, and because we lack the information needed to review the district court's actions, we cannot rule on the propriety of the district court's holding.

The circuit court did not discuss the reasons for its denial of plaintiff's complaint for superintending control in its written order dismissing the complaint. However, in the April 4, 2005, hearing on plaintiff's complaint for superintending control, the circuit court stated that it found no error by the chief judges of the Calhoun circuit and district courts in issuing the January 28, 2005, memorandum and that it affirmed the district court's decision to remove plaintiff from representing Goodrich. Although the circuit court's comments at a hearing are not binding, see *Lown v JJ Eaton Place*, 235 Mich App 721, 726; 598 NW2d 633 (1999), we note that the circuit court should not have based its ruling on the merits of the district court's actions. Instead, the circuit court should have denied plaintiff's complaint on procedural grounds. Regardless, we will not reverse a trial court's order if the trial court reached the correct result, albeit for the wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

⁷ Plaintiff included a transcript of the February 22, 2005, preliminary examination hearing as an exhibit with his complaint for superintending control. At the hearing, the district court stated, "in cases involving the Calhoun County Prosecutor's Office, [plaintiff] is ethically prohibited from representing clients." However, "[a] court speaks through its orders, and the jurisdiction of this Court is confined to judgments and orders." *Lown v JJ Eaton Place*, 235 Mich App 721, 726; 598 NW2d 633 (1999). Accordingly, we would need to consider the district court's written order, not its statements at the motion hearing, if we were to determine if, and the extent to which, the district court's actions were erroneous.

Affirmed.

/s/ Christopher M. Murrery

/s/ Donald S. Owens